

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

TROY ANTHONY SMOCKS

V.

THE UNITED STATES OF AMERICA

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CIVIL ACTION NO. 4:22CV1028
JUDGE MAZZANT/JUDGE JOHNSON

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On July 2, 2024, Magistrate Judge entered a Report and Recommendation (the “Report”) (Dkt. #51) containing proposed findings of fact and recommendations regarding the United States of America’s (the “Government”) Motion to Dismiss (Dkt. #30). The Report (Dkt. #51) recommends that the Motion to Dismiss (Dkt. #30) be granted. Specifically, the Report (Dkt. #51) recommends that (1) Plaintiff’s claims for aggravated kidnapping, burglary, violations of the Texas Election Code, creation of a dangerous and deadly environment, willful and wanton disregard for state and federal law, and violations of Texas and federal statutory law be dismissed without prejudice due to lack of subject matter jurisdiction; (2) Plaintiff’s claims for trespass, invasion of privacy, false imprisonment, and mental anguish be dismissed with prejudice; and (3) Plaintiff’s claims for assault, intentional infliction of emotional distress, negligence, and personal property damage be dismissed without prejudice. The Report (Dkt. #51) further recommends that Plaintiff be given leave to file an amended complaint on his claims for assault, intentional infliction of emotional distress, negligence, and personal property damage no later than fourteen (14) days after the entry of the Memorandum Adopting Report and Recommendation, if any. Finally, the Report

(Dkt. #51) recommends that if Plaintiff fails to timely file an amended complaint, Plaintiff's claims for assault, intentional infliction of emotional distress, negligence, and personal property damage should be dismissed with prejudice.

On July 8, 2024, Plaintiff Troy Anthony Smocks ("Plaintiff") filed objections (the "Objections") (Dkt. #52) to the Report (Dkt. #51). The Court has conducted a *de novo* review of the Objections (Dkt. #52) and is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Objections (Dkt. #52) are without merit as to the ultimate findings of the Magistrate Judge. Accordingly, Plaintiff's Objections (Dkt. #52) are **OVERRULED** and the Magistrate Judge's Report (Dkt. #51) is **ADOPTED** as the findings and conclusions of the Court.

IT IS ORDERED that the Motion to Dismiss (Dkt. #30) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's claims for aggravated kidnapping, burglary, violations of the Texas Election Code, creation of a dangerous and deadly environment, willful and wanton disregard for state and federal law, and violations of Texas and federal statutory law be **DISMISSED WITHOUT PREJUDICE** due to lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that Plaintiff's claims for trespass, invasion of privacy, false imprisonment, and mental anguish be **DISMISSED WITH PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff's claims for assault, intentional infliction of emotional distress, negligence, and personal property damage are **DISMISSED WITHOUT PREJUDICE**, and Plaintiff is given leave to file an amended complaint on these claims no later than fourteen (14) days after the entry of this Memorandum Adopting Report and Recommendation. If Plaintiff fails to timely file an amended complaint, Plaintiff's claims for assault, intentional infliction of emotional distress, negligence, and personal property damage will be dismissed with prejudice.

SIGNED this 30th day of July, 2024.

A handwritten signature in black ink, reading "Amos Mazzant". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE